



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 03 2014** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Philippines, was last admitted to the United States on June 5, 2010 as a nonimmigrant visitor. After obtaining a divorce from her first husband in Nevada on October 1, 2010,¹ the petitioner wed her second husband, W-W-, a U.S. citizen, on October 30, 2010 in Nevada.² The petitioner filed the instant Form I-360 on May 16, 2011. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) of, among other things, the petitioner's good-faith entry into the marriage and the requisite battery or extreme cruelty. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

¹ Case No. [REDACTED] Judicial Court of Nevada, [REDACTED] County.

² Name withheld to protect the individual's identity.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the additional evidence submitted on appeal do not overcome the director's determinations and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial affidavit, the petitioner stated that she first met W-W- in July 2010 when she visited [REDACTED] California. She stated that W-W- had suffered a stroke seven years prior to their first meeting and they began their courtship after she performed massage therapy on him. The petitioner recounted that during their courtship she and W-W- attended family gatherings together and she continued to give him massage therapy. She stated that they became engaged in August 2010 and began residing together prior to their October 2010 marriage. The petitioner stated that she and W-W- were happy for the first week of their marriage. In her affidavit submitted in response to the NOID, the petitioner reiterated that she first met W-W- when she visited Davis in July 2010. She recounted that they were engaged in August 2010 and wed on October 30, 2010. She stated that she was living "luxuriously" in the Philippines and left behind her business because of her relationship with W-W-. The petitioner, however, did not probatively describe how she first met her husband, their courtship, wedding, joint residence or shared experiences.

The petitioner submitted affidavits from: her friends [REDACTED] her brother-in-law, [REDACTED] and her sister, [REDACTED] indicated that she became aware of the relationship after the marriage and recounted in her two statements that she visited the couple at their residence for spa treatments on three occasions. However, her descriptions of her interactions with the couple lack probative details on the petitioner's good-faith intentions in entering the marriage. [REDACTED] stated that she lived near the couple and knows that they resided together. She stated that she visited the couple at their home on several occasions to see their garden, but she did not further elaborate on her interactions with the couple. [REDACTED] listed the couple's shared experiences in her two letters. However, she did not discuss her interactions with the couple or otherwise describe her personal knowledge of the marital relationship.

[REDACTED] issued a joint letter in response to the RFE that discussed the petitioner's courtship with W-W- in just a few brief sentences. [REDACTED] issued another letter in response to the RFE that also only briefly discussed the couple's courtship and stated that the petitioner met W-W- through her friend [REDACTED]. The petitioner, however, did not discuss the circumstances of how she first met W-W- in either of her two affidavits. [REDACTED] issued additional affidavits in response to the NOID, which focused on the alleged abuse and only briefly discussed their knowledge of the couple's courtship.

The petitioner submitted as documentary evidence photographs of herself and W-W-, and a life insurance policy for W-W- listing the petitioner as the beneficiary. The petitioner stated that the photographs were taken of herself and W-W- during their wedding ceremony and courtship.

However, she did not describe either of these events in probative detail. The director correctly determined that the petitioner did not establish by a preponderance of the evidence her good-faith entry into the marriage.

On appeal, the petitioner submits another statement from [REDACTED] and the petitioner's previously filed evidence. Mr. [REDACTED] recounts that he was the couple's "personal driver" and took them grocery shopping, to medical appointments and to church. He states that on one occasion he and the petitioner had lunch with W-W-'s family members. His statement does not describe any particular event or social occasion with the couple in any probative detail.

On appeal, counsel asserts that the petitioner submitted sufficient evidence to demonstrate that she entered the marriage in good-faith. Counsel also contends that because the petitioner submitted evidence that she resided with her husband, she has established a good faith marriage. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other. In this case, the petitioner submitted evidence of having been photographed with W-W- and that he applied for life insurance. However, she failed to discuss how she first met W-W- and their wedding ceremony. In addition, her descriptions of her courtship with W-W-, their shared experiences and joint residence lack sufficient details. The statements from the petitioner's friends and family members also fail to provide probative information on the petitioner's interactions with or feelings for W-W- during the couple's courtship and marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record also fails to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. In her initial affidavit, the petitioner recounted that prior to their marriage, W-W- used profanity and was jealous. She stated that on October 8, 2010 he physically restrained her when she was sleeping and she had to receive medical treatment as a result. She stated that after their October 30, 2010 marriage, W-W- continued to act jealous and he again physically restrained her when she was sleeping. The petitioner stated that W-W- ignored her and also was upset when she spoke with her children from another relationship. She recounted that W-W- wanted her to be near him at all times, accused her of having an extramarital affair, and he controlled her appearance and finances. The petitioner stated that at the end of December, W-W- abandoned her and reunited with his former spouse. In her affidavit submitted in response to the NOID, the petitioner stated that she was diagnosed with a urinary tract infection because W-W- physically restrained her movements. She reiterated that W-W- was jealous and suspicious that she was having an extramarital affair. The petitioner's discussion of the claimed abuse fails to probatively describe specific incidents of battery and extreme cruelty during the couple's marriage.

The affidavits from the petitioner's friends and family members also fail to demonstrate that the petitioner's husband subjected her to battery or extreme cruelty. [REDACTED]

did not discuss the claimed abuse. [REDACTED] recounted in her first statement that the petitioner was upset because W-W- restricted her cell phone usage. [REDACTED] recounted in his first affidavit that the petitioner told him that W-W- accused her of having an affair. He further recounted that he took the petitioner to the hospital because she had a headache and stomach pains after W-W- physically restrained her. Mr. [REDACTED] stated that W-W- abandoned the petitioner at the end of December 2010. [REDACTED] recounted in her first affidavit that the petitioner told her that W-W- used profanity and accused her of having an affair. She stated that she took the petitioner to the hospital after W-W- physically restrained her. Mrs. [REDACTED] also stated that W-W- abandoned the petitioner at the end of December 2010. These statements fail to provide credible, probative details of the claimed battery and extreme cruelty. For example, [REDACTED] in her undated letter and [REDACTED] in his letter submitted in response to the RFE stated that the petitioner helped W-W- with his "paralytic problem." The petitioner similarly stated in her initial affidavit that W-W- suffered a stroke that affected his speech and mobility. However, the record does not indicate the extent of W-W-'s physical impairments and it does not address how W-W- was able to physically restrict the petitioner's movements if he suffered from restricted mobility and paralysis.

The petitioner submitted her medical records, which show that on October 9, 2010, she was admitted to a hospital for abdominal pain. Although the petitioner claimed in her affidavit that she went to a hospital for medical treatment after W-W- physically restrained her, the physician notes show that it was a prior condition because she had similar abdominal pain two weeks before the hospital visit. The petitioner was diagnosed with a possible urinary tract infection and her medical records do not show a causal connection between her medical condition and the alleged physical restraint or other physical abuse.

The petitioner submitted a "Documented Incident" report from the [REDACTED] Police Department, which provides that when the petitioner retrieved her belongings from the residence she shared with W-W-, she requested a civil standby. The report further provides that there was one item that was in dispute and the police officer advised that it was a civil issue and he or she could no longer assist the petitioner. The report does not indicate that the petitioner's husband battered her or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a letter from [REDACTED] a therapist with the [REDACTED] Ms. [REDACTED] stated that she is closing the petitioner's file and has referred the petitioner to other facilities more convenient to the petitioner's residential location in [REDACTED] California. The petitioner submitted a certificate showing that she completed the [REDACTED] provided by [REDACTED]. These documents do not indicate that the petitioner was subjected to battery or extreme cruelty, as that term is defined in the regulation.

The petitioner also submitted a psychological evaluation from [REDACTED] Ph.D., who diagnosed the petitioner with major depressive disorder and Post-traumatic stress disorder (PTSD). Dr. [REDACTED]'s one-paragraph description of the claimed abuse reiterates the petitioner's own statements and fails to provide any additional probative details. For example, Dr. [REDACTED] stated that during the petitioner's evaluation she reported that W-W- "threw things" and he did not allow her to work. However, the petitioner only generally claimed these incidents occurred but did not describe any specific incidents of

objects being thrown by W-W- in either of her affidavits. The claims that W-W- did not allow the petitioner to work are in conflict with [REDACTED] statement that she visited the couple's residence on three occasions for spa treatments from the petitioner. The incidents of abuse are only briefly described in the psychological evaluation and fail to provide any probative details to sufficiently establish the petitioner's claims.

On appeal, counsel asserts that the petitioner submitted credible evidence to establish that she was subjected to extreme cruelty by her husband. Counsel contends that the director improperly treated the acts described by the petitioner as mere signs of a deteriorating marriage. While the director's characterization of the petitioner's claims as "events stemming from a deteriorating marriage" may have been overly generalized, the director's ultimate determination that the petitioner's evidence was insufficient is supported by the record. The petitioner's two affidavits lack probative details of the claimed battery and extreme cruelty. The statements from [REDACTED] also fail to provide probative details to support the petitioner's claims. In his statement submitted on appeal, [REDACTED] asserts that W-W- accused the petitioner of having an affair. His one-sentence statement of the claimed abuse fails to provide any probative information to substantiate the petitioner's claims. The petitioner's medical records show that she was diagnosed with a urinary tract infection, but they do not indicate that the petitioner's condition was in any way related to the abuse. The documented incident report similarly fails to show that W-W- subjected the petitioner to battery, threatened violence, psychological or sexual abuse, or other acts that constitute extreme cruelty, as that term is defined in the regulation. Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith and he subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.